IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/06/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.3707 OF 2001

S. Manickam .. Petitioner

-Vs-

1. The Secretary to Government,
Industries Department,
Fort St. George,
Chennai 600 009.

2. The Managing Director,
M/s. Tamilnadu Magnesite Ltd.,
5/53, Omalur Main Road,
Jagir Ammapalayam Post,
Salem 636 202.

3. M/s. India Magnesite Products Ltd.,
rep. by its Chairman,
11/239, Balaji Towers,
Ramakrishna Road,
Salem 636 007. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.R. Thiagarajan
Senior Counsel for
Mr.P. Srinivas

For Respondents 1-2 : Mr.M.R. Raghavan
For Respondent-3 : M/s. T.S. Gopalan & Co.

:J U D G M E N T

The prayer in this writ petition is to issue a writ of certiorarified mandamus to call for records relating to order No.1(2)/P&A/7313/98-99 dated 26.11.1998 passed by the second respondent and quash the same and direct the second respondent to retransfer/absorb the petitioner in the services of the second respondent with all benefits.

2. The petitioner was appointed as Assistant Project Engineer (Mechanical) under the second respondent company, which is wholly owned by Government of Tamil Nadu. Third respondent is a Joint Venture company. The second respondent was formed under G.O.Ms.No.41 dated 10.1.19 79. The services of the petitioner had been confirmed with effect from 1.10.1985 under the second respondent. While the matter stood thus, the Government as per G.O.Ms.No.855 dated 16.8.1990 decided to have a joint venture with M/s. Khaitan Supermag Limited (KSL) wherein the second respondent□s share is 26%,KSL share is 25% and the balance 49% is by general public. According to the petitioner, the second respondent retains the overall control of the third respondent joint venture company being the largest shareholder and also by holding the post of Chairman on the Board of Directors. After formation of the third respondent company, the petitioner was transferred to serve under the said company. Subsequently, the petitioner made several representations to bring him back to the second respondent. It was pointed out by the petitioner that there was lot of disparity in the salary structure payable to the employees. Subsequently, the representation of the petitioner was rejected under the impugned letter dated 24/26.11.1998, wherein it was indicated that the petitioner did not have any lien on the second respondent and had no right to claim reversion from third respondent to second respondent.

3. A counter affidavit has been filed on behalf of respondent No.2, wherein apart from raising the question of maintainability of the writ petition, it has been indicated that the petitioner had not been posted under the third respondent on deputation and the petitioner did not retain any lien over the post holding under the second respondent. Since there was no further necessity for the second respondent to retain the petitioner, it has been proposed to place his services under the third respondent permanently and the petitioner had agreed to such and the petitioner was permanently transferred to joint venture company on 20.6.1991 and consequently he was relieved from the services of the second respondent on 31.7.1991.

4. Learned senior counsel appearing for the petitioner has invited my attention to several documents in support of his contention that the petitioner had been transferred only to do a job under the third respondent, but the services of the petitioner must be taken to be continuing with the second respondent. To appreciate such a contention, it is necessary to refer to various documents on record.

5. The initial appointment was on the basis of advertisement published in various newspapers including The Hindu dated 23.2.1983, where under the second respondent invited applications for the post of Assistant Project Engineers. In the said advertisement, it was indicated that experience in the installation and running of Rotary Kilns was required. On the basis of the aforesaid, the contention of the learned senior counsel is to the effect that the petitioner had been recruited for a specific purpose or item of work, as such there was no question of diverting for any other work.

I am afraid that this contention cannot be sustained. The advertisement only indicated the preference of the company regarding

experience, but no where it is specified that a person to be employed is to be confined to a particular work. On the other hand the appointment letter itself indicates that a person employed would be transferred to any other place or project wherein the second respondent had interest.

6. The proposal to place the services of the petitioner under the third respondent is contained in the letter dated 18.3.1991. The said letter itself indicates that it was an advance notice for transferring you and your services to the Joint Venture Company namely India Magnesia Products Limited. In the said letter, it was also clearly indicated :

 . . . Your strength on the cadre of TANMAG is surplus one among others as it might have been known to yourself. Though the purpose of your recruitment could not be fulfilled, you are kept on the rolls of TANMAG hoping that there would be a venture like the present one. In as much as TANMAG has got interest in the Joint Venture Company, you are hereby called upon to express the willingness whether you will be willing to work in Joint Venture Company with the existing pay and facilities without any disadvantage. You are hereby called upon to express your willingness on this aspect.

In the event of your refusal to this proposal, TANMAG will have no option except to terminate your services in terms of Rule 2.14 of Service Rules by observing the formalities. In either case you will be given adequate Notice and other necessary formalities will be observed. Therefore you are requested hereby to intimate your willingness or option in this context in writing to the Management within 7 days from the date of service of this Notice to you. . . .

7. The petitioner had given a reply to the aforesaid notice by letter dated 26.3.1991 wherein the petitioner after indicating the privileges and perquisites enjoyed under the second respondent in condition of his appointment had written as follows :-

 . . . I would request the Chairman and Managing Director to confirm that the above facilities and perquisites, which are available to me at present in TANMAG will be extended in the proposed joint venture company also.

Kindly let me also know whether continuity of my service will be maintained from the date of my joining in TANMAG in joint venture company. . ..

8. The context in which earlier notice had been sent and the reply of the petitioner himself makes it clear that the proposal was to place the services of the petitioner under the third respondent permanently severing all his ties with the previous employer and the petitioner himself wanted to know whether continuity of his service would be maintained from the date of his appointment under the third respondent. If the proposal would have been to merely transfer the petitioner on deputation, the question of having

continuity of service would not have been arisen. In reply to the aforesaid query of the petitioner, the Chairman and the Managing Director of the second respondent, as per Ref.No.354/91-92 replied :-

 . . . This has reference to your reply dt. 26.3.91 for the advance transfer notice issued by us. In this connection, we would like to state that as per the Promoter s Agreement signed between M/s. Tamilnadu Magnesite Limited & M/S. Khaitan Supermag Limited, Calcutta, to form a New Joint Venture Company, it is provided that the Officers & Staff of TANMAG involved in the implementation of the Project prior to the date of the agreement shall be given employment in the new Joint Venture Company. In the Joint Venture Company, such personnel shall be given employment in such a manner as to adequately protect the service conditions as enjoyed by them during their employment with TANMAG.

9. The aforesaid letter also clearly indicates that even though as per the Promoter s Agreement it has been decided to adequately protect the service conditions enjoyed by the employees under the second respondent, it was clearly indicated:

 The date of joining in the services of TANMAG shall be deemed to be the date of joining at the Joint Venture Company for reckoning the length of service of such personnel for all purposes including the payment of Gratuity.

We hope that the above fact will suffice to clarify your doubts raised in your letter referred above.

Therefore, you are advised to submit your willingness in writing immediately for the transfer of your service to the Joint Venture Company, namely M/s. India Magnesia Products Limited.

10. Subsequently, the Chairman and the Managing Director by letter dated 29.4.1991 again called for the option of the petitioner. After receipt of the aforesaid communication, the petitioner had written a letter dated 2.5.1991 raising certain doubts/objections. However, he indicated :

 . . . Under the above circumstances, I would like to continue my service in TANMAG, otherwise as per clause 2.17 of Service Rules I am willing to work in the Joint Venture Company.

11. However, the second respondent again wrote by letter dated 11.5 .1991 that there was no further requirement of the petitioner under the second respondent and transfer of service is proposed without any disadvantage. It was further indicated :

 . . . Also, please note that it is not possible to depute you to

Joint Venture Company as per Clause 2.17 of the Service Rules of the Company, since you are expected to render your service in the Joint Venture Company, as you have already been involved in the Project right from the stage of conception.

Since TANMAG has got no work hereafter to continue your services, your employment has become surplus as already intimated to you vide our letter first cited.

In as much as the fact that, we have adequately protected your service conditions in the Joint Venture Company and that your transfer is proposed in the existing pay without any disadvantage and that you had already involved in the implementation of the Chemical Beneficiation Project, the Management is justified in transferring your service to the Joint Venture Company and therefore, you have to convey your willingness for the same gladly. . . .

12. Thereafter the petitioner wrote back on 29.5.1991 in the following terms :-

. . . As the management is aware my recruitment was made through Paper Advertisement specifically seeking experience in installation and running of Rotary Kiln Plant and also as per the provisions of Rotary Kiln Plant Detailed Project Report. I accepted the appointment order and joined in TANMAG for installation and running of Rotary Kiln Plant. Hence using my services in Chemical Beneficiation Project is only as per the wish of the Management, as per the Service Rules. While temporarily transferring from Rotary Kiln Plant in 1986, as Inter Departmental Transfer, as per Service Rules it is clear that assignment entrusted in Chemical Beneficiation Plant is an additional one.

As the Management is well aware I was involved in the Rotary Kiln Plant right from the conception to commissioning and also in running. Hence retaining me in TANMAG is more justified. The question of surplus is not applicable in my case. However, I have already opted to render my services as per the clause 2.17 of Service Rules.

Even though the above is the fact, since the management is repeatedly pressurising and also stated one of the above referred letters to terminate my services, if not willing to work in Joint Venture Company.

On the above and my present family and financial circumstances, presently I am giving my willingness to work in Joint Venture Company with all previleges, perquisites and facilities enjoyed by me in TANMAG and mentioned in the letter second cited in the reference. . . .

13. After these exchange of correspondence between the second respondent and the petitioner, the first respondent by letter dated 20.6.2 001 transferred and placed the services of the petitioner under the joint venture company. The relevant portion of such letter is to the following effect :-

. . . With reference to the letters cited, we hereby transfer you

and your services permanently to the Joint Venture Company, namely, M/s. India Magnesia Products Limited, Salem.

As per the Promotor's Agreement, you will be given employment in the Joint Venture Company in such a manner as to adequately protect the service conditions as enjoyed by you during your employment with M/s. Tamilnadu Magnesite Limited (TANMAG). The date of joining in the services of TANMAG

shall be deemed to be the date of joining at the Joint Venture Company for reckoning the length of service for all purposes including the payment of Gratuity. . . .

14. The petitioner again wrote letter 2.7.1991 wherein he raised the question of retaining the lien of service. It was further indicated :

. . . Once again I would like to inform under the present circumstances and reasons explained, I am accepting the letter No.1(2)/3199/91-92, dated 20.06.91 and exercise my willingness to work in the Joint Venture Company subject to the condition that all the perquisites, facilities, etc. enjoyed by me and will enjoy, if my services are continued in TANMAG, will be extended in Joint Venture Company.

15. Thereafter, on behalf of third respondent letter relating to employment dated 25.7.1991 was served on the petitioner. The relevant portion is to the following effect:-

. . . We invite you to join the rolls of INDIA MAGNESIA PRODUCTS LTD. with effect from 1 August 1991.

You have already been advised by Tamilnadu Magnesite Ltd, vide their letter No.1(2)/3199/91-92, dated 20.06.91 that you and your services are being transferred, with your consent, to India Magnesia Products Ltd.

Your terms of employment with India Magnesia Products Ltd. will be such as to adequately protect the service conditions enjoyed by you during your employment with Tamilnadu Magnesite Ltd. Continuity of service for all purposes will be maintained.

. . .

Kindly return the duplicate of this letter, duly signed in token of your acceptance of the employment. We will thereafter seek release of your services with Tamilnadu Magnesite Ltd. from close of business on 31 July 1991.

Subsequently, the petitioner was relieved from the services of the second respondent with effect from 31.7.1991.

16. On the basis of the aforesaid, the petitioner had

subsequently joined under the third respondent. However, after serving under the third respondent for some time, the petitioner and few others went on representing to the Managing Director of the second respondent to revert them back to the second respondent. Pursuant to the representation dated 31.10.1998, the petitioner was served with letter dated 24/26-11-1998 written by the second respondent. The correspondence is to the following effect:-

 . . . With reference to the above, it is hereby informed that you and your services were permanently transferred to the Joint Venture Company, namely, M/s. India Magnesia Product Limited (IMPL). Accordingly, you were relieved from the service of the company from the afternoon of 31.7.91. As such, you have no lien on TANMAG and no right to claim reversion of your service from M/s.IMPL to TANMAG.

This letter has been impugned in the present writ petition.

17. The main contention of the petitioner is to the effect that since he had been recruited for specific purpose and subsequently made permanent and the service rules being silent about transfer of services, the second respondent had no jurisdiction to transfer the petitioner. It is further contended that there was no consent of the petitioner, but under the threat of termination, the petitioner had agreed to serve under the third respondent.

18. It is of course true that various correspondence indicate that initially the petitioner had demurred about his transfer to the third respondent and had also raised the question of lien or deputation, but the fact remains that the petitioner had agreed to serve under the third respondent and the entire correspondence indicate that the relationship of employer and employee between the second respondent and the petitioner had come to an end. Even though there was a fresh employment under the third respondent, it had agreed to protect the service conditions and the privileges and also to count the past services towards gratuity. From the correspondence made, it is very difficult to come to a conclusion that in fact the petitioner had been posted under the third respondent on deputation basis. If the petitioner would not have opted under the third respondent, the services of the petitioner possibly would have been terminated as the second respondent had repeatedly indicated that there was no further work for the petitioner under the second respondent. Thus, it may be true that the petitioner had reluctantly accepted the transfer of service to the third respondent, but it is clear from the various correspondence that the petitioner had severed all his relationship with the second respondent. In such view of the matter, it cannot be said that the petitioner had any right to claim that he should be reverted back to the second respondent. The impugned letter issued by the second respondent in 1998 cannot be said to be illegal or without jurisdiction.

19. For the aforesaid reasons, I do not find any merit in this writ petition, which is accordingly dismissed. No costs.

Index : Yes
Internet: Yes

dpk

To

1. The Secretary to Government,
Industries Department,
Fort St. George,
Chennai 600 009.

2. The Managing Director,
M/s. Tamilnadu Magnesite Ltd.,
5/53, Omalur Main Road,
Jagir Ammapalayam Post,
Salem 636 202.

3. M/s. India Magnesite Products Ltd.,
rep. by its Chairman,
11/239, Balaji Towers,
Ramakrishna Road,
Salem 636 007.